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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 692 (JMF)

5 IVARS OZOLS,

6 Defendant.

Sentencing

7 -----x

8 New York, N.Y.  
9 February 12, 2019  
3:57 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
Southern District of New York

17 BY: MATTHEW J.C. HELLMAN

EMILY JOHNSON

DANIEL G. NESSIM

18 Assistant United States Attorneys

19 KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for Defendant

20 BY: DARREN LaVERNE, ESQ.

SAMUEL B. SHEPSON, ESQ.

21 ALSO PRESENT: CHRISTINA FOX, Special Agent, FBI

22  
23 ALSO PRESENT: NELLY ALISHAEV, Interpreter (Russian)

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(Case called)

THE DEPUTY CLERK: Counsel, please state your appearance for the record.

MR. HELLMAN: Good afternoon. Matthew Hellman, Emily Johnson, and Daniel Nessim for the government. With us at counsel table is Special Agent Christina Fox from the FBI.

THE COURT: Good afternoon. A common force.

MR. LaVERNE: Good afternoon, your Honor. Darren LaVerne for Mr. Ozols, and I have one colleague with me, Mr. Shepson of our office. Thank you.

THE COURT: All right. Good afternoon to you as well.

We do have a Russian language interpreter here today. My understanding is that Mr. Ozols does understand and speak English, is that correct?

MR. LaVERNE: He speaks it. I've dealt with him now obviously for some period of time, and I would say he's developed a better speaking understanding of English but sometimes needs the interpreter's assistance.

THE COURT: All right. Mr. Ozols, would you like to communicate in English and then just turn to the interpreter if you need assistance, or would you prefer to use the interpreter? What's your preference?

THE DEFENDANT: (Through interpreter) Whenever it's necessary.

THE COURT: All right. Very good. So if at any point

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1 you have any trouble understanding or want to use the  
2 interpreter's services, just let me know and we will certainly  
3 allow that. All right?

4 THE DEFENDANT: (In English) Yes, sir.

5 THE COURT: All right. If you could move the  
6 microphone a little closer to you, please, that would be  
7 helpful.

8 All right. We are here for purposes of sentencing.  
9 In preparation for today's proceeding, I have reviewed the  
10 presentence report dated January 11, 2019. I've also received  
11 and reviewed the following additional submissions:

12 The defendant's submission dated January 22, 2019, and  
13 the attachments to that submission, including various letters,  
14 letters from the defendant, his fiancée, his fiancée's sister,  
15 his parents, his son, some friends and acquaintances, as well  
16 as various other documents, including documents from other  
17 defendants or relating to other defendants in this case and  
18 other cases, an MDC work performance rating, and so on.

19 I've also received and reviewed the government's  
20 submission dated January 29, 2019.

21 On top of that, I've received and reviewed various  
22 victim impact statements. Some of those are documented at  
23 Docket Nos. 82 and 94, and more recently I received letters, I  
24 think forwarded by the government, one under cover letter dated  
25 February 11, 2019, and the other didn't have a cover letter but

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1 I think was a 55-page document that was transmitted at some  
2 point in the last few days.

3 Mr. LaVerne, have you received a copy of those  
4 submissions?

5 MR. LaVERNE: I have, your Honor, and I had a comment  
6 just as to one of them, if your Honor please.

7 One of the letters that came in this morning I think  
8 erroneously suggested that Mr. Ozols was the individual who had  
9 interacted with the victim across the internet and sort of the  
10 front-facing part of the scam. My guess is that the victim was  
11 just told that a Mr. Ozols was being sentenced today and  
12 assumed that was the person that he'd interacted with. I don't  
13 think Mr. Hellman would dispute my characterization and the  
14 fact that there is no evidence here that Mr. Ozols himself had  
15 interacted with this particular victim.

16 THE COURT: And you said a letter that came this  
17 morning. Is it that you received it this morning?

18 MR. LaVERNE: I believe I received it either last  
19 night or this morning over the internet. I'm not sure when it  
20 was provided to the Court.

21 THE COURT: All right. So this is the last letter in  
22 the smaller packet that says, "I had the unfortunate  
23 circumstances of crossing paths with the accused"?

24 MR. LaVERNE: That's correct.

25 THE COURT: Okay. Understood.

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1 Mr. Hellman, any dispute on that score?

2 MR. HELLMAN: No.

3 THE COURT: And any reason that these letters can't be  
4 docketed with any identifying information regarding the victims  
5 redacted?

6 MR. HELLMAN: No. And the government has endeavored  
7 to provide redacted copies, which I believe comport with the  
8 individual rules of the Court.

9 THE COURT: All right. If you could docket them on  
10 ECF just so they're part of the public record, and to the  
11 extent that there are other sentencings coming up and these are  
12 not really specific to any one defendant, I think it would be  
13 helpful if they were on the docket. All right?

14 MR. HELLMAN: Yes. Thank you.

15 THE COURT: And also, just for recordkeeping purposes,  
16 I would say going forward, if you have additional letters that  
17 you plan to submit, it is helpful to have them under a cover  
18 letter, just so I can reference that by date, as opposed to  
19 this batch that didn't have a cover letter associated.

20 MR. HELLMAN: My copy does. It may not have come  
21 through in the transmission, but we'll make sure the docketed  
22 version has a cover letter.

23 THE COURT: All right. Well, what is the date of your  
24 cover letter?

25 MR. HELLMAN: January 25, 2019.

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1 THE COURT: Gotcha. Well, that's a mystery.

2 All right. So each of you has received the other's  
3 submissions and the submissions that I just referenced, is that  
4 correct?

5 MR. LaVERNE: That's correct, your Honor.

6 MR. HELLMAN: Yes.

7 THE COURT: And are there any other submissions that I  
8 should have received?

9 MR. LaVERNE: None from the defense.

10 MR. HELLMAN: And none from the government.

11 THE COURT: All right. Very good.

12 And before I proceed, let me just confirm -- I assume  
13 the answer is yes, given these victim impact statements, but --  
14 has the government notified any crime victims of their rights  
15 with respect to today's proceedings?

16 MR. HELLMAN: We have, both directly and through the  
17 automated notification system in the office, many victims.

18 THE COURT: All right. Very good.

19 Mr. LaVerne, have you read the presentence report?

20 MR. LaVERNE: I have, your Honor.

21 THE COURT: And have you discussed it with Mr. Ozols?

22 MR. LaVERNE: Yes.

23 THE COURT: Putting aside the guidelines for a moment,  
24 any objections with respect to the factual accuracy of the  
25 report?

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1 MR. LaVERNE: The only objections we had were  
2 contained in the objections that we sent to probation.

3 THE COURT: All right. And have those been addressed  
4 in the final disclosure?

5 MR. LaVERNE: They were not all accepted, but they  
6 were all addressed in one way or the other.

7 THE COURT: Okay. Mr. Ozols, have you read the  
8 presentence report?

9 THE DEFENDANT: (In English) Yes.

10 THE COURT: And were you able to understand it in  
11 English?

12 THE DEFENDANT: (In English) It was --

13 THE COURT: Just move the microphone, please. Just  
14 bring it right close, like an inch or two away.

15 THE DEFENDANT: (In English) Yes, I read and I had  
16 translated, and something I don't understand, she will  
17 translate for me.

18 THE COURT: So you utilized the services of a  
19 translator?

20 MR. LaVERNE: Your Honor, we had a translator on hand.  
21 Similar sort of thing; where necessary, the translator helped  
22 us.

23 THE COURT: All right. And did you discuss it with  
24 Mr. LaVerne, with counsel?

25 THE DEFENDANT: (In English) Yes.

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1 THE COURT: And did you have enough time to go over  
2 the report with your lawyers and discuss anything that you  
3 would want to bring to my attention in connection with your  
4 sentencing?

5 THE DEFENDANT: (In English) Yes.

6 THE COURT: All right. Mr. Hellman, did you review  
7 the presentence report?

8 MR. HELLMAN: Yes.

9 THE COURT: And putting aside the guidelines, any  
10 objection to the factual accuracy of the report?

11 MR. HELLMAN: No.

12 THE COURT: Hearing no objections, I will adopt the  
13 factual recitations set forth in the presentence report, which  
14 will be made part of the record and kept under seal in this  
15 matter. If an appeal is taken, counsel on appeal may have  
16 access to the sealed report without further application to me.

17 Turning then to the Sentencing Guidelines, as counsel  
18 know, I'm not bound by the guidelines, but I do have to  
19 consider the applicable guidelines range in determining an  
20 appropriate sentence and must therefore begin by accurately  
21 calculating the guidelines range.

22 In this case there was a plea agreement in which the  
23 parties agreed to a stipulated guidelines range, but my  
24 understanding is that probation has calculated a slightly  
25 higher range by virtue of coming up with a higher loss figure.



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1 Is that correct?

2 MR. LaVERNE: That's correct. I'd much rather they  
3 calculated it slightly higher, but it's higher.

4 THE COURT: All right. Now I certainly understand  
5 that both sides adhered to the plea agreement or have asked me  
6 to sentence the defendant within the stipulated guidelines  
7 range, but my task is, in the first instance, to determine what  
8 the actual guidelines range is. I take it from your letters  
9 that I sort of sense that no one is actually disputing  
10 probation's calculation based on the information known to the  
11 parties as of today, is that correct?

12 MR. LaVERNE: That's correct, your Honor. We realize  
13 the Court can use your discretion in terms of applying the  
14 number.

15 THE COURT: All right. Mr. Hellman?

16 MR. HELLMAN: That's right.

17 THE COURT: All right. So based on the parties'  
18 agreement, the absence of any objection, and my independent  
19 evaluation of the guidelines, I accept the guidelines  
20 calculation that's set forth in the presentence report. That  
21 is, using the November 2018 edition of the guidelines, I find  
22 that the total offense level is 24, criminal history category  
23 is I, and the guidelines range is 51 to 63 months'  
24 imprisonment, with a fine range of \$20,000 to \$1 million.

25 In the plea agreement both parties agreed not to seek

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1 a departure from the admittedly different guidelines range. Is  
2 that correct?

3 MR. LaVERNE: That's correct, your Honor.

4 MR. HELLMAN: Yes.

5 THE COURT: I've nevertheless considered whether there  
6 is any appropriate basis for a departure from the range that I  
7 just articulated and do not find that there are any such  
8 grounds. Obviously departures are different from what has come  
9 to be known as a variance.

10 With that, let me turn first to counsel, and then if  
11 Mr. Ozols wishes to say anything, I'll hear from him.

12 I have read your sentencing submissions so you don't  
13 need to repeat what you've already stated there, and obviously  
14 this isn't my first sentencing in this matter, as both sides  
15 clearly know.

16 So with that, let me hear first from Mr. Hellman.

17 MR. HELLMAN: Thank you. And not to recapitulate what  
18 is already in the government's sentencing submission, I'll  
19 point out, in light of what was just discussed, it is still the  
20 government's position that a sentence within the guidelines  
21 range to which the parties stipulated is appropriate in this  
22 case. It's 41 to 51 months, which is a significant and  
23 important sentence to reflect the enormous harm that this  
24 conspiracy, and in particular this defendant's conduct within  
25 the conspiracy, has occasioned upon many victims in the case.

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1           As the Court could see in the government's sentencing  
2 submission, a particular victim deposited funds on July 11th  
3 and 12th of 2017, and in the days that followed, Mr. Ozols  
4 personally entered bank branches in Florida and withdrew that  
5 victim's funds. A letter from that victim's, that late  
6 victim's domestic partner, life partner, was submitted in the  
7 sequence of victim impact statements, evincing the incredible  
8 damage that the theft of thousands of dollars from vulnerable  
9 victims can occasion. The financial harm to the victims is  
10 mentioned in all of the victim impact statements, but almost  
11 all of them also mention the emotional toll that these thefts  
12 took on them, the personal toll it took on their relationships,  
13 the feelings of foolishness and helplessness that came  
14 afterwards.

15           For this conspiracy to succeed, it requires actors  
16 like the defendant to come to the United States, represent that  
17 they are something they are not, and enter the banks again and  
18 again, taking funds from those victims.

19           The amount of the loss is important here, because each  
20 dollar represents a direct attributable loss to a victim who  
21 believed they were purchasing something. These victims include  
22 people at all ranges of sophistication. Some of them are older  
23 members of society who are chasing an old dream or thrill with  
24 a classic car, some are car dealers themselves who have been  
25 engaged in online sales for as long as online auto sales have

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1     existed. They're not unsophisticated victims. They get  
2     documentation and paperwork from members of the conspiracy,  
3     which, as previously mentioned, are not occupying the same role  
4     as the defendant. But the victims really believe that they  
5     have brokered a deal in good faith and that they're not fools  
6     parting with their money, who feel very differently at the end  
7     of the experience. And it is the government's position that  
8     significant sentences with respect to defendants like Mr. Ozols  
9     are one of the only ways that the victims can obtain any  
10    measure of relief from the embarrassment, financial harm, and  
11    in some cases total ruin to which they've come in the aftermath  
12    of what are to them very significant financial crimes.

13           And second, one of the most powerful, if not only  
14    ways, that this conspiracy can be addressed for every victim  
15    and really for every actor in the conspiracy, who is subject to  
16    a significant sentence, it becomes that much more difficult for  
17    the conspiracy to achieve its aims in convincing people to come  
18    to the United States and engage in the conduct in the first  
19    place.

20           If there are any particular questions from the  
21    Court --

22           THE COURT: I do have a few. Thank you for that.

23           First is, I'd like you to just respond to two  
24    representations or things mentioned in the defense submission.

25           Number one, counsel represents that Mr. Ozols

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1 immediately confessed upon his arrest to the FBI, and I'm  
2 curious to know if that is accurate.

3 Second, he represents that in essence, he began his  
4 involvement in the crimes -- I use the term not in the legal  
5 sense but in the colloquial sense -- under coercion, that he  
6 had made a loan to others involved in the conspiracy and in  
7 essence was paying off that loan and sort of, you know,  
8 threatened and coerced to involve himself. I think he doesn't  
9 deny that he continued his involvement even after that was paid  
10 off and beyond the reach of those individuals, but do you have  
11 any information one way or another regarding that?

12 So those two questions.

13 MR. HELLMAN: To the first, the defendant did make a  
14 statement to law enforcement after he was apprehended. I think  
15 that that -- it was a confession. There were many admissions  
16 during that statement. I don't know that the statement  
17 represents the absolute totality of the defendant's involvement  
18 in the conspiracy. But it's fair to say that he did not  
19 immediately deny his role in the offense when questioned by the  
20 FBI. He, understanding *Miranda*, waived it, provided a  
21 statement, and the government does acknowledge that.

22 To the second question, the government sought to  
23 address this in its submission somewhat.

24 THE COURT: I inferred that you -- well, you were  
25 equivocal with respect to the representation. You responded to

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1 it but didn't embrace the representation; let's put it that  
2 way.

3 MR. HELLMAN: It's a difficult question to answer  
4 because in a way it's almost an impossible assertion for the  
5 government to cleanly rebut. In a sense the statement -- or  
6 the suggestion seeks to have it both ways. The defendant was  
7 under some form of duress or coercion, suffering threats, and  
8 his family was also suffering threats at the time that he joins  
9 the conspiracy, but he also fully embraces responsibility by  
10 admitting that he remained in the conspiracy well after that  
11 threat had passed.

12 One of the interesting aspects, from the government's  
13 point of view, about the source of the loan or the duration of  
14 the loan is it was about almost ten years, apparently interest  
15 free, and of a different quality than the loans which were  
16 professional business loans. They appear on their face, to the  
17 government's reckoning, and based on its knowledge of  
18 co-defendants who are from similar communities -- including,  
19 for example, the weightlifting community in Latvia in  
20 particular, people that the defendant would have known through  
21 that community -- frankly, we have no way of knowing whether  
22 any such threats were actually made or were not made. But I  
23 think the important thing from our point of view is that based  
24 on what the investigation revealed about wire transfers going  
25 back to Latvia, about the amount of time the defendant spent in

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1 the conspiracy, about the defendant's own admissions about the  
2 amount of money that he obtained from his involvement in the  
3 conspiracy, any such debt was paid well before the defendant  
4 withdrew from the conspiracy, and it would appear, therefore,  
5 that certainly for a significant portion of the duration of the  
6 defendant's involvement in the conspiracy here, he was a  
7 willing, active, engaged participant in the conspiracy, without  
8 any threat to his family or himself back in Latvia.

9           Apparently while here, the defendant met a woman and  
10 became engaged, and was enjoying the period of time that he was  
11 living in Florida. I can't argue with the idea that the  
12 defendant wishes to get back to his family overseas, but if it  
13 is true that he was brought here initially with his family  
14 under threat and with his own personal safety under threat,  
15 when that harm or risk of danger abated, one would have  
16 expected that the defendant would have withdrawn from the  
17 conspiracy and headed for home. He appears to have done the  
18 opposite.

19           THE COURT: All right. And in terms of comparators,  
20 defense seeks to compare Mr. Ozols to Mr. Mukans, and I  
21 understand you've compared him to Mr. Jankevics, but of course  
22 I haven't sentenced that defendant yet. With respect to the  
23 defendants that I have sentenced, how would you compare  
24 Mr. Ozols on the dimension of culpability? If I remember  
25 correctly, Mr. Mukans' loss amount was not as high as it is for

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1 Mr. Ozols.

2 MR. HELLMAN: Correct. I'm sorry. I don't have the  
3 number offhand. I think of the defendants who have been  
4 sentenced so far, it is probably closer to that of Mukans.  
5 When we, in the coming weeks, head to the sentencing of  
6 Mr. Jankevics, I would compare him to Mr. Ozols, because it  
7 appears from the investigation, from the duration of time they  
8 were in the United States and from their conduct, that they  
9 were very similarly situated -- that is, as, in the  
10 government's estimation, prolific members of the conspiracy  
11 heading into the banks in order to withdraw victim funds over a  
12 sustained period of time.

13 THE COURT: All right. And three more questions.

14 First: Restitution and forfeiture. On restitution,  
15 are you seeking the amount referenced in the presentence  
16 report?

17 MR. HELLMAN: Mr. LaVerne and I had an opportunity to  
18 discuss that before court today. I note that the Court has  
19 provided about 90 days in the past. I think something much  
20 less than that would be the government's ask for an opportunity  
21 to come to an agreement with counsel and submit a proposed  
22 restitution order for the Court. It will be I think along the  
23 lines of what is contained within the presentence report.

24 THE COURT: And forfeiture, there's a preliminary  
25 order of forfeiture in the amount of I think \$234,522. Is that



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1 the amount that you are asking for today?

2 MR. HELLMAN: In forfeiture, yes.

3 THE COURT: All right. And then last but not least, I  
4 think my order had indicated that counsel should be prepared to  
5 update me on the state of play at the MDC and also address what  
6 effect, if any, that should have on sentencing. What's your  
7 thought on the latter, and anything you can tell me on the  
8 former?

9 MR. HELLMAN: So the government's best information  
10 with respect to the recent power outage and other challenges at  
11 the MDC is that they are at this point resolved. The power is  
12 back on, and it is back to business as usual at the MDC. I  
13 know that during that period visits with counsel were  
14 curtailed. I'm not in a position right now -- and I'm sure  
15 Mr. LaVerne can help -- to know where Mr. Ozols was in the  
16 facility and whether any of the difficulties there, beyond the  
17 visitation, were actually transmitted to Mr. Ozols. That being  
18 said, I don't think that the one week or so of the experience  
19 of the inmates at the MDC should color the sentence, which is  
20 to address the defendant's conduct, which is well before that  
21 happened. I understand that it may be a compelling factor to  
22 Mr. Ozols, but that is a period of time at the MDC prior to the  
23 sentence and was totally out of the control of the Court or the  
24 government. A fire at the MDC was in effect, as the government  
25 currently understands it, akin to an act of god, and there is

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1 currently an investigation from a number of different angles  
2 ongoing to determine what could have been done to forestall or  
3 ameliorate the situation in a more productive way, but I don't  
4 know that it should affect the Court's decision in rendering a  
5 sentence here today.

6 THE COURT: All right. I think that might have  
7 painted it a little more rosy than reality was, but that's  
8 fine. Thank you.

9 Mr. LaVerne, let me hear from you.

10 MR. LaVERNE: Thank you, your Honor. And if I may,  
11 I'll address the MDC point first, just so I don't forget to do  
12 that.

13 We've obviously spoken to Mr. Ozols about his own  
14 experience, which was harrowing that week at the MDC and I  
15 think consistent with the experiences that your Honor has  
16 probably heard about, whether through the hearing that Judge  
17 Torres conducted last week or other avenues. Mr. Ozols --  
18 after the power went down on that Sunday, the following day  
19 Mr. Ozols was locked into his cell, and up until Thursday, the  
20 inmates were only let out very briefly for meals but were  
21 otherwise locked in their cell the entire time. There was no  
22 power, there was no lighting within their cells, and perhaps  
23 most disturbingly, the heat was off. Mr. Ozols told us that  
24 the temperature, he estimates -- obviously he didn't have a  
25 thermometer, but he estimates the temperature in his cell was

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1 from 35 to 40 degrees during this period of time. No blankets  
2 were handed out until the courts got involved and attention was  
3 paid to this the following week. The Thursday of that week,  
4 things got worse. Mr. Ozols, who's on the seventh floor --  
5 which I note is one of the floors that Judge Torres visited  
6 after a hearing last week -- Mr. Ozols, at least his unit was  
7 locked down completely from Thursday evening to the following  
8 Sunday. They were not let out at all. They were sitting in  
9 darkness. They were freezing. Mr. Ozols, I can tell you, he's  
10 not a complainer by nature. And just hearing him though relate  
11 what was happening and what was happening and the experience of  
12 others around him who needed medical care and such was very  
13 disturbing. For Mr. Hellman to say -- I don't think he really  
14 meant this -- to say that it was sort of out of their control  
15 and an act of god and something that was not in the  
16 government's control -- when I say government, I mean BOP's  
17 control -- I think is absurd. I think that will be borne out  
18 in not this proceeding but in other proceedings that are  
19 addressed to this specific issue, including the civil suit  
20 that's been filed in the Eastern District. I guess what I  
21 would say for today is, I do think, and I would ask, that the  
22 Court give some consideration to the fact that there was excess  
23 and extreme punishment visited upon Mr. Ozols during that week.  
24 And actually, to be honest, your Honor, I believe, if you heard  
25 the testimony in front of Judge Torres last week, there were

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1 troubles with the heat in the weeks prior as well. So I'd ask,  
2 your Honor, that you incorporate that in some fashion in your  
3 thinking about the duration of the sentence to be imposed here.

4 That's all I'll say about the MDC, unless your Honor  
5 has questions.

6 THE COURT: No. That's good. Thank you.

7 MR. LaVERNE: A few points in response to Mr. Hellman.  
8 I'm not going to rehash what's in my memorandum, obviously.

9 I don't blame him for focusing on the harm to the  
10 victims. The victim impact statements were very powerful, and  
11 no one is disputing here what this fraud caused and the damage  
12 that it did to others. I do think, your Honor, that, as your  
13 Honor knows, that is only one part of the equation. There are  
14 other things to consider here.

15 I take the point that, you know, without people like  
16 Mr. Ozols, the fraud could not have been perpetrated. He did  
17 move money, take it out of accounts and send it overseas. I  
18 think you can make the same argument about a drug courier or  
19 any lower-level participant in a criminal scheme, and the  
20 question is really not simply could the fraud have been  
21 perpetrated without him but what role did he play as compared  
22 to others in the scheme. And just following the docket, I see  
23 that the government has now arrested folks in Latvia who I  
24 imagine were further up in the hierarchy of the scheme and will  
25 be here before your Honor and you'll have an opportunity to

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1 compare the relative culpability here, as your Honor has tried  
2 to do I think with respect to the defendants that have come  
3 before you already.

4 Look, what's crucial here, and I think what we tried  
5 to highlight in our memorandum for Mr. Ozols and to distinguish  
6 Mr. Ozols from the other folks who have come before you, are  
7 the other parts of the sentencing equation, including his  
8 personal history and characteristics and the context for his  
9 involvement in this particular crime. I hear your Honor's  
10 questions sort of probing how the government's -- what their  
11 reaction is to our assertions in the memorandum. Look, one of  
12 the things I've found -- I'm relatively recent to the CJA  
13 panel, this is my first time I represented someone who is here  
14 as an immigrant and was really only here for ten months -- is  
15 that it's much harder, and there's a lot of challenges in terms  
16 of corroborating things they tell you and understanding their  
17 life, because you don't have the friends and family at hand and  
18 all the records at your disposal as you might with a defendant  
19 who is here. Everything is overseas, and it's harder to get.  
20 We did our best. We spoke -- we were lucky in that Mr. Ozols,  
21 as we said, has a very close relationship with his 18-year-old  
22 son, who was in touch with us, who was helpful in talking to  
23 us, giving us his perspective on his father's life, helping us  
24 try to find further corroboration of that from other family  
25 members, and we did. I mean, we put in letters from his

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1 parents, who corroborated not simply the fact that he did have  
2 these loans hanging over his head but that they themselves had  
3 mortgaged their apartment and were having trouble now, are  
4 having trouble, making those payments as a result of his  
5 business going bust. His parents further corroborated in their  
6 letter that there were these threatening individuals who had  
7 come around their apartment back in Latvia asking for  
8 Mr. Ozols. So we've offered that corroboration.

9 I guess the other point, your Honor, which I would  
10 make is, it's the only explanation or it is the explanation in  
11 this context that explains and makes sense of Mr. Ozols's life  
12 and his involvement in this offense. I mean, he had 20 years  
13 of work history, working in a variety of different  
14 professions -- butcher, production operator at a manufacturing  
15 plant for seven years, a trucker, he started his own business.  
16 This is someone who does not look for a quick buck, an easy  
17 buck. He's not a fraudster. And it makes sense, I submit,  
18 your Honor, that it's only under the circumstances that he  
19 found himself in -- that is, severely under debt -- that he  
20 agreed to enter into this offense.

21 I take Mr. Hellman's point. I'm not arguing that he  
22 came over here and lived, as I think he put it, an aesthetic  
23 life. He wasn't a monk. He didn't save every dollar and put  
24 it towards the loan that he owed. Some of the money he sent  
25 back to his son, to help his son pay rent and other life

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1 expenses. He sent other money back to his parents. He spent  
2 some money for himself. But also, the function, the real  
3 purpose of him being here and being involved in the offense was  
4 to pay down this loan, which he did to a certain extent over  
5 time.

6 Your Honor had asked about his confession. I have it  
7 here. I'm happy to hand it up. It's a, you know,  
8 three-and-a-half-page, single-spaced document. He was  
9 interviewed extensively the morning of his arrest. Yes, he  
10 didn't give every single detail of the conspiracy. I don't  
11 think the circumstances lent themselves to that. He did  
12 confess to the essence of what it was, explained what it was,  
13 how it worked, his involvement. He mentioned the individuals  
14 over in Latvia. And I submit, your Honor, that it's evidence  
15 of the fact that this is not an inveterate criminal; it's  
16 someone who was caught, understood immediately that this was  
17 wrong, and wanted to make amends and do what he could to make  
18 things right. So that's with regard to that.

19 With regard to situating Mr. Ozols with respect to the  
20 other defendants in this case, those who have been sentenced,  
21 we included a significant section about this in our memorandum  
22 because I would imagine it's at the top of mind for your Honor.  
23 Look, our view is that Mukans is the most similarly situated  
24 insofar as he was a lower-level participant, he wasn't a more  
25 supervisory type of participant like the other individuals who

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1 have been sentenced. His loss amount, I believe -- and we  
2 cited it in our papers -- was 250,000 to 550,000, and his  
3 guidelines were 41 to 51 months. So he essentially was in the  
4 range that the parties have stipulated to as part of the  
5 agreement. I recognize that further information came out after  
6 additional investigation. But I don't think, as a matter of  
7 scope of involvement and loss, he is that much differently  
8 situated from Mr. Ozols. We pointed out that as a matter of  
9 the withdrawals that Mr. Ozols made, we counted the numbers and  
10 he's just over the threshold of \$550,000 threshold, and would  
11 otherwise be in Mr. Mukans' category.

12 I do think there are differences for Mr. Mukans' case.  
13 Foremost among them, absent from his case were all of these  
14 mitigating circumstances that we've been through and  
15 corroborated; absent from his case was the many years of work  
16 history that Mr. Ozols has had and the evidence that he is not  
17 someone you have to worry about recidivating, that this was  
18 essentially an aberration in his life. And Mr. Ozols, like  
19 Mr. Mukans, is in his 40s, unlike the other defendants you've  
20 sentenced, all in their 20s. I think that has factored into  
21 your Honor's sentences.

22 That's essentially what I have to say. I'm certainly  
23 open to any questions your Honor has. I think I've addressed  
24 everything that Mr. Hellman raised, but if there are other  
25 issues that you think merit addressing, please do let me know.



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1 THE COURT: I guess just as a housekeeping matter,  
2 with regard to restitution and forfeiture, I assume on  
3 forfeiture, no objection to entering an order of forfeiture  
4 consistent with the preliminary order?

5 MR. LaVERNE: That's correct.

6 THE COURT: And on restitution, sounds like you're  
7 discussing it.

8 MR. LaVERNE: That's right, your Honor.

9 THE COURT: All right. Very good.

10 Mr. Ozols, is there anything that you would like to  
11 say before I sentence you?

12 MR. LaVERNE: Mr. Ozols very much wanted to say some  
13 words in English to your Honor, so he's written something out.  
14 I ask for the Court's indulgence. He's not fluent, obviously,  
15 so it may take him a bit of time, but he would like to read it.

16 THE COURT: Sure. Two requests:

17 One, just if you could read it slowly and loudly into  
18 the microphone, that would be very helpful.

19 Two, Mr. LaVerne, the court reporter may appreciate  
20 getting a written copy, if you can provide that after the fact,  
21 just to ensure that the record is accurate.

22 But with that, Mr. Ozols?

23 THE DEFENDANT: (In English) Your Honor, thank you for  
24 taking the time to listen to me. I wanted to apologize to the  
25 Court, and the US attorney, for taking their time related to my

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1 stupid mistake. I will be forever embarrassed for my actions.  
2 And I know that it will follow me the rest of my life. I want  
3 to take -- say thank you to US attorney for working with me and  
4 my attorney to resolve my legal problem.

5 I know that I have wonderful fiancée at home and two  
6 beautiful kids that I have a lot to make up for to them. It  
7 will take a long time to regain their trust. I will be working  
8 on that for rest -- for many years for what I have done to them  
9 for -- in my absence.

10 I know that what I did is really wrong; it's very  
11 wrong. I hope my actions, immediately discussing with  
12 arresting officers, show that. I know that it will not make up  
13 for what I did with victims for all of this crime. But I hope  
14 it's -- I hope it is a beginning.

15 When your Honor determines that I have served my  
16 punishment in US, United States, I have a long road ahead of me  
17 back in my country Latvia. I am looking forward to the  
18 challenge. I have a lot to give back to my community in the  
19 future -- in the future through my physical fitness gifts. I  
20 cannot wait -- I cannot wait to share them with kids in the  
21 future and explain that my "shortcut" solution to my problem is  
22 never the right way to fix something.

23 Thank you for your time. I promise that you will  
24 never have to deal with me or my mistakes again. Thank you.

25 THE COURT: Thank you, Mr. Ozols.

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1 I take it there are no victims present in court today,  
2 is that correct?

3 MR. HELLMAN: Correct.

4 THE COURT: All right. And is there any reason why  
5 sentence should not be imposed at this time?

6 MR. HELLMAN: No.

7 MR. LaVERNE: No, your Honor.

8 THE COURT: In imposing sentence, I am required to  
9 consider the factors set forth in Title 18 United States Code  
10 Section 3553(a). Those include:

11 First, the nature and circumstances of the offense and  
12 the history and characteristics of the defendant;

13 Second, the need for the sentence imposed to advance  
14 the purposes of sentencing -- namely, to reflect the  
15 seriousness of the offense, to promote respect for the law, and  
16 to provide just punishment for the offense, to afford adequate  
17 deterrence to criminal conduct, to protect the public from  
18 further crimes of the defendant, and to provide the defendant  
19 with needed educational or vocational training, medical care,  
20 or other correctional treatment in the most effective manner;

21 Third, the kinds of sentences available;

22 Fourth, the guidelines range, which I have found to be  
23 51 to 63 months' imprisonment;

24 Fifth, any pertinent policy statement;

25 Sixth, the need to avoid unwarranted sentencing

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1 disparities among defendants with similar records who have been  
2 found guilty of similar conduct;

3 Seventh, the need to provide restitution to any  
4 victims of the offense.

5 Ultimately I am required to impose a sentence that is  
6 sufficient but no greater than necessary to serve the purposes  
7 of sentencing that I mentioned a moment ago.

8 This is not my first word on the crime to which  
9 Mr. Ozols has pleaded guilty, since I've sentenced a number of  
10 other defendants in this case, and for that reason, I'm not  
11 writing on a blank slate, or speaking on a blank slate. As  
12 I've said before, I do think the crime here is a significant,  
13 serious one, and for that reason calls for a substantial  
14 punishment. It's a serious offense. There are real victims.  
15 I think the letters that I received in the last few days really  
16 bring that to life, perhaps in a way that the earlier victim  
17 impact statements didn't even do. The one that Mr. Hellman  
18 referred to from the wife of one of the victims who committed  
19 suicide after the fraud here was particularly poignant.  
20 Obviously that may or may not have been attributable to the  
21 fraud and, regardless, wasn't directly attributable to  
22 Mr. Ozols, but it does underscore the pain caused by the  
23 victimization of these people, many of whom, it appears from  
24 these letters, were particularly vulnerable and lost  
25 substantial amounts of money, if not their entire life savings.

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1           In addition, like some of the other defendants,  
2 Mr. Ozols came here and overstayed his visa, came here for the  
3 purpose of committing a crime, which itself is a serious and  
4 significant thing.

5           I think the most recent letters from victims also  
6 really underscore and make clear just how sophisticated the  
7 scheme was. For all of the time I've spent in connection with  
8 this case before, I'm not sure I fully realized quite how  
9 sophisticated it was in terms of the ways in which the  
10 defendants posed as legitimate dealers, used others' identities  
11 and the like in an effort to trick and steal money from  
12 victims, all of which I think does underscore and call for a  
13 substantial sentence, largely for the purposes of deterrence.  
14 I think folks like Mr. Ozols are instrumental to this scheme,  
15 and while he wasn't the mastermind behind it, it wouldn't be  
16 successful, it wouldn't be doable without people like him  
17 willing to be the feet on the ground, if you will, getting the  
18 money and sending it back to Latvia or Lithuania.

19           Having said that, I don't necessarily think that  
20 warrants a guidelines sentence. One word on that. I do think  
21 that the relevant guidelines range is the correct one. I  
22 recognize that the parties stipulated to a lower range, but my  
23 general view on that is that it would be a windfall to a  
24 defendant to give him the benefit of the lower range,  
25 particularly since presumably the defendant knows better than

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1 the government the full range of his conduct at the time of an  
2 agreement and in that regard probably takes his chances that  
3 the government may find out more information. Moreover, at the  
4 time of the plea, I did advise Mr. Ozols, as I do in every  
5 plea, that in the event that I determine the guidelines range  
6 is higher, that that would have no bearing on his plea and in  
7 that sense he's bound by the guidelines range as it's correctly  
8 determined.

9 Be that as it may, I do think that a nonguidelines  
10 sentence is appropriate. I am moved by Mr. Ozols's obvious  
11 remorse and contrition. The fact that he did immediately  
12 confess to the FBI, in broad strokes, if not in fine detail, is  
13 significant and corroborates that.

14 This is his first offense. It seems clear to me that  
15 there's not a great need for specific deterrence or a need to  
16 protect the public from further crimes of Mr. Ozols. When push  
17 comes to shove, I think the need for general deterrence is the  
18 overriding reason for a substantial sentence, but it doesn't  
19 necessarily call for a sentence within the guidelines range.

20 Finally, I do believe and will give Mr. Ozols some  
21 credit for what he endured at the MDC in the last few weeks.  
22 This is not the forum in which to litigate the full scope of  
23 what happened and whose fault it is. I certainly don't fault  
24 the U.S. Attorney's Office, but to the extent that Mr. Hellman  
25 referred to the government writ large, it is clearly the

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1 government's fault, and even if there was a fire, it's pretty  
2 clear to me, based on what I have heard and read, that steps  
3 could have been taken, and taken more quickly, to address the  
4 problems, even if the problems initially arose for reasons  
5 unrelated to anyone's fault. And the bottom line is, the  
6 conditions that I read about are the conditions that one  
7 associates with a third world country and not a country like  
8 this, and nobody in detention, whether convicted, not  
9 convicted, awaiting sentencing, should have to endure that as  
10 the detainees did at the MDC. Again, this is not the forum on  
11 which to fully litigate these matters. I recognize a lawsuit  
12 has been filed in the Eastern District, and I presume that that  
13 will proceed. But I do think that some acknowledgment of these  
14 recent events is appropriate here.

15 So for all of those reasons, I do think a  
16 nonguidelines sentence is appropriate.

17 I would add to that the sentence that I imposed on  
18 Mr. Mukans. Sounds like there is agreement that as to the  
19 defendants I have sentenced, that he is the most comparably  
20 seated, if you will. The loss amount and guidelines range here  
21 are higher, and for that reason there is an argument for a  
22 slightly higher range, but I also recognize that there are some  
23 mitigating circumstances here that were not present in  
24 Mr. Mukans' case.

25 So with those preliminary remarks aside, I will now

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1 state the sentence that I intend to impose.

2 And Mr. Ozols, I would ask you to please rise.

3 Mr. Ozols, it is the judgment of this Court that you  
4 are remanded to the custody of the Bureau of Prisons for a  
5 period of 39 months -- that is, three years and three months --  
6 to be followed by a period of three years of supervised  
7 release.

8 Supervised release is likely to be academic insofar as  
9 I expect you'll be removed from this country and returned to  
10 Latvia, if not somewhere else, but during your term of  
11 supervised release, you will be subject to the following  
12 mandatory conditions:

13 You shall not commit another federal, state, or local  
14 crime;

15 You shall not illegally possess a controlled  
16 substance;

17 You shall refrain from any unlawful use of a  
18 controlled substance and submit to one drug test within 15 days  
19 of your release and at least two periodic drug tests  
20 thereafter, as determined by probation;

21 You shall cooperate in the collection of DNA as  
22 directed by probation;

23 And you shall satisfy your financial obligations that  
24 I will discuss shortly, including complying with any  
25 installment payment schedule that I impose.



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1           In addition, the standard conditions of supervised  
2 release which are set forth in the presentence report and will  
3 be set forth in the judgment shall apply. Among other things,  
4 you shall not possess a firearm or destructive device; and you  
5 shall report to the probation office in the judicial district  
6 where you are authorized to reside within 72 hours of your  
7 release from custody.

8           Finally, you must also meet the following special  
9 conditions:

10           You shall obey the immigration laws and comply with  
11 the directives of immigration authorities.

12           You shall submit your person, residence, place of  
13 business, vehicle, or any property or electronic device under  
14 your control to a search on the basis that the probation  
15 officer has a reasonable belief that contraband or evidence of  
16 a violation of the conditions of release may be found. The  
17 search must be conducted at a reasonable time and in a  
18 reasonable manner. Failure to submit to a search may be  
19 grounds for revocation. You shall inform any other residents  
20 that the premises may be subject to search pursuant to that  
21 condition.

22           You shall provide the probation officer with access to  
23 any requested financial information, unless you have satisfied  
24 your financial obligations.

25           You shall not incur any new credit charges or open

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1 additional lines of credit without the approval of the  
2 probation officer unless you have satisfied your financial  
3 obligations.

4 And you shall be supervised in the district of your  
5 residence.

6 I'm not going to impose a fine because I find that you  
7 would not have the ability to pay a fine and it would interfere  
8 with your restitution payments.

9 I will impose restitution in an amount to be  
10 determined within the next 90 days. Counsel should confer in  
11 an effort to agree upon a proposed restitution order and submit  
12 it to me. You will make restitution in accordance with  
13 Title 18 United States Code Section 3663(a), payable to the  
14 clerk of the United States District Court for disbursement to  
15 the victims that will be set forth on the order to be entered.  
16 That obligation shall be joint and several with your  
17 co-defendants. I will waive the requirement of interest under  
18 Section 3664(f) in light of your financial circumstances.

19 If you are engaged in a BOP nonUNICOR work program,  
20 you shall pay \$25 per quarter towards the criminal financial  
21 penalties. However, if you participate in the UNICOR program  
22 as a Grade 1 through 4, you shall pay 50 percent of your  
23 monthly UNICOR earnings toward the criminal financial penalties  
24 consistent with BOP regulations. Any payment made that is not  
25 payment in full shall be divided proportionally among the

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1 victims named. Restitution shall thereafter be paid in monthly  
2 installments of 15 percent of your gross monthly income over  
3 the period of supervision to commence 30 days after your  
4 release from custody. And if there's any material change in  
5 your economic circumstances that might affect your ability to  
6 pay restitution, you shall notify the Court and the probation  
7 department.

8 I also impose the mandatory special assessment of  
9 \$100, which shall be due and payable immediately.

10 And in accordance with the preliminary order of  
11 forfeiture, I order you to forfeit to the United States  
12 \$234,522, which represents the proceeds that you obtained  
13 directly or indirectly as a result of your criminal activity.  
14 That obligation shall be joint and several with the obligations  
15 of your co-defendants.

16 Does either counsel know of any legal reason why the  
17 sentence should not be imposed as stated?

18 MR. HELLMAN: No.

19 MR. LaVERNE: No, your Honor.

20 THE COURT: Sentence as stated is imposed. I find  
21 that the sentence is sufficient but no greater than necessary  
22 to satisfy the sentencing purposes set forth in Section  
23 3553(a)(2), including the need to promote respect for the law,  
24 to promote just punishment for the offense, to afford adequate  
25 deterrence to the defendant, and, as I said, more importantly,

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1 to others, and to protect the public from further crimes of the  
2 defendant.

3 Mr. LaVerne, any requests with respect to a  
4 designation location?

5 MR. LaVERNE: Yes. Thank you, your Honor. Two  
6 requests, actually.

7 One is, I'd ask respectfully, your Honor, that you  
8 recommend that Mr. Ozols be designated to a facility in  
9 Florida, or near Florida. His fiancée, Ms. Shaw, spends time  
10 there. It would be easier for her to visit.

11 The second request, I wonder whether your Honor would  
12 consider making a recommendation that Mr. Ozols serve his time  
13 in a BOP facility as opposed to a privately contracted  
14 facility. As I understand it, many immigrants under a final  
15 order of removal and are facing deportation are sent to these  
16 facilities these days. They have no programming; the  
17 conditions there are apparently horrible. I make that request  
18 particularly in light of what Mr. Ozols has been through at the  
19 MDC.

20 THE COURT: All right. Well, I confess that's a first  
21 for me. I haven't received that sort of request before and I'm  
22 not aware that there is a distinction between the two. But I  
23 have no problem making the recommendation, recognizing, of  
24 course, that it's ultimately up to BOP. So I will make that  
25 recommendation, and I will certainly recommend that he be

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1 designated to a facility in Florida. Florida is rather large.  
2 Is there a particular area in Florida?

3 (Mr. LaVerne conferring with the defendant)

4 MR. LaVERNE: Closer to Miami.

5 THE COURT: All right. I'll recommend that he be  
6 designated to a facility as close to Miami as possible to  
7 facilitate the maintenance of ties to his fiancée.

8 Mr. Ozols, I hope that what you told me earlier today  
9 and what you wrote in the letter that you submitted to me --  
10 and for that I thank you -- I hope that I can take you at your  
11 word that you will put this matter behind you. No person is  
12 defined by any one thing that they do, and you are certainly  
13 not defined by what you did that led you to be here. And I  
14 hope you can put it behind you and move on with your life once  
15 you have served your sentence. You obviously are a man with  
16 some talent, as reflected in your athletic performance, and I  
17 hope that you are able to use that skill or any other talents  
18 that you may have to live a law-abiding life in Latvia and put  
19 your days of crime behind you and that you do live up to the  
20 remorse that you have expressed today.

21 Mr. Hellman, are there any open counts that need to be  
22 dismissed?

23 MR. HELLMAN: Yes. Count Two, and I move to dismiss  
24 Count Two at this time.

25 THE COURT: It is so dismissed.

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1           Mr. Ozols, to the extent that you have not given up  
2 your right to appeal through your guilty plea and the plea  
3 agreement that you entered into in connection with your plea,  
4 you do have the right to appeal. Any notice of appeal must be  
5 filed within 14 days of entry of the judgment. If you cannot  
6 afford to pay the cost of an appeal, you may apply for leave to  
7 appeal *in forma pauperis*.

8           Anything else?

9           MR. LaVERNE: No. Thank you, your Honor.

10          MR. HELLMAN: Not from the government.

11          THE COURT: All right. One note, and then I'll  
12 adjourn.

13          Mr. Hellman, or counsel at the front table, to the  
14 extent that we have other sentencings coming up, I would say if  
15 you can engage in the meet-and-confer process with respect to  
16 restitution in advance of it, just to avoid the need to stretch  
17 things out beyond the sentencing proceeding, it might be  
18 helpful. Obviously if there is reason to keep it open, that's  
19 one thing, but if you can resolve it before sentencing, that  
20 would be advantageous.

21          MR. HELLMAN: Yes.

22          THE COURT: All right. Thank you.

23          Mr. Ozols, I wish you the best of luck. And we are  
24 adjourned. Thank you.

25          THE DEPUTY CLERK: All rise.